

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street, MS-29
Sacramento, California 95814

Web Site: www.energy.ca.gov



STATE OF CALIFORNIA

Energy Resources Conservation
And Development Commission

In the Matter of:)	Docket No. 01-AFC-6
)	
Application for Certification)	STAFF'S POSTION REGARDING
of the MAGNOLIA POWER PROJECT)	THE CURRENT STATUS OF
By Southern California Public Power)	THIS PROCEEDING AND THE
Authority)	REMAINING SCHEDULE
)	
_____)	

In accordance with the Assigned Committee's Scheduling Conference Notice issued on March 1, 2002, the Energy Commission Staff hereby tenders its position on the current status of this proceeding and the remaining schedule in this matter.

I. FACTUAL BACKGROUND

On May 14, 2001, the Southern California Public Power Authority (SCPPA) filed an Application For Certification with the California Energy Commission (CEC or Commission) to construct and operate a 250 megawatt (MW) natural gas-fired combined cycle power plant at an existing power plant site currently owned and operated by the City of Burbank. The SCPPA proposal, referred to as the Magnolia Power Project (MPP), is seeking a license pursuant to the CEC's expedited six (6) month siting process, authorized by Public Resources Code Section 25550.

On September 26, 2001, the Commission deemed the Application to be data adequate. Thereafter, a site visit, discovery and related workshops were completed in a timely manner. A Staff Assessment was issued on January 10, 2002, one month later than initially scheduled because of a delay in receiving the South Coast Air Quality Management District (SCAQMD) Preliminary Determination of Compliance (PDOC).

At a day-long workshop held on the Staff Assessment on January 23, 2002, there was extensive discussion concerning a letter, dated January 8, 2002, from Dennis A. Dickerson (Executive Officer of the Los Angeles Regional Water Quality Control Board (LARWQCB) to Bill Carnahan of the SCPPA. In summary, the letter stated that SCPPA, as the owner of the Magnolia

Power Project, would need to apply for a *new* NPDES permit and could not simply operate through the *existing* permit which the City of Burbank holds for its current discharges from the site. The letter also stated that the new NPDES permit would regulate the MPP as a “new discharger,” and would apply the requirements of the California Toxics Rule (CTR), the State Implementation Plan (SIP), and the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) to the MPP.

During the workshop, Staff informed the Applicant that it would need to receive and review any application for a new NPDES permit, and any related draft (or preliminary) NPDES permit conditions from the LARWQCB, *before* Staff could complete its evaluation of this project. The Applicant stated that it intended to further discuss the ownership/NPDES issue with the LARWQCB, and asserted its belief that a new NPDES permit would not be required in this case.

On February 13, 2002, the LARWQCB (Mr. Dickerson) issued a modified letter to the Applicant (Mr. Carnahan) which concludes that the Applicant “can be covered under the City of Burbank’s (COB) existing NPDES permit . . . [but the] existing NPDES permit *must be revised prior to . . . commencing operation of the Magnolia Power Project.*” This letter also states that the revised permit would apply the requirements of the California Toxics Rule (CTR) and the State Implementation Plan (SIP) to the MPP (just as would be required for a new permit), and the MPP would have to comply with all conditions contained in the revised NPDES permit *immediately* upon discharging waste water, i.e. there would be no extended compliance schedule as is often provided for holders of existing NPDES permits.

On February 22, 2002, a Staff Memo (from soil and water expert Richard Sapudar to project manager James Reede) was filed and served in this matter. That memo restates the facts above, and concludes by noting that “Staff requires a draft revised NPDES permit for review to determine if the proposed project design will comply with the revised NPDES permit conditions, and to evaluate [the environmental impacts of] any redesign of the MPP should it be necessary to meet the revised NPDES permit conditions.”

On February 28, 2002, the Applicant’s attorney (Mr. Scott Galati) initiated a conference call with assigned Commission Hearing Officer Susan Gefter and Staff Attorney David Abelson. Mr. Galati suggested that because of scheduling issues surrounding the NPDES permit, the Committee’s Prehearing Conference (then scheduled for March 11, 2002) should be converted into a Scheduling Conference instead, with parties afforded an opportunity to present their positions on the NPDES issue to the Committee and Hearing Advisor in writing prior to the Scheduling Conference. On March 1, 2002, Mr. Galati formally tendered this request, as agreed to by Staff Counsel, in a letter to the Committee, and it was so ordered by the Committee on that same day.

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II. THE NPDES PERMIT ISSUE RENDERS IT LEGALLY PROBLEMATIC FOR THIS CASE TO REMAIN WITHIN THE COMMISSION'S SIX MONTH SITING PROCESS

The letter issued by the LARWQCB on February 13, 2002, changes the circumstances regarding the applicable NPDES permit for this project, and now renders it problematic as to whether the MPP proposal can legally remain within the Commission's six-month siting process.

Initially, Staff notes the requirements of Public Resources Code Section 25550(b) which state that:

“Thermal powerplants and related facilities reviewed under this [six-month] process shall satisfy the requirements of Section 25520 and *[shall provide] other necessary information required by the commission, by regulation, including the information required for permitting by each local, state and regional agency* that would have jurisdiction over the proposed thermal powerplant and related facilities but for the exclusive jurisdiction of the commission and the information required for permitting by each federal agency that has jurisdiction over the proposed thermal powerplant and related facilities.” (emphasis added).

Pursuant to this statutory directive, the Commission has adopted detailed regulations concerning the type of information which must be provided *before* a proposed powerplant, such as MPP, can be licensed under the six-month process. Among other things, Title 20, California Code of Regulations (CCR), Section 2022(b) requires:

“(1) Substantial evidence that the project as proposed in the application will comply with all standards, ordinances, and laws applicable at the time of certification, including:

....

(C) where a standard, ordinance, or law is expected to change between the time of filing an application and certification, information from the responsible jurisdiction documenting the impending change, the schedule for the enactment of the change, and whether the proposed project will comply with the changed standard, ordinance, or law; and

(D) a list of the requirements for permitting by each federal, state, regional, and local agency that has jurisdiction over the proposed project or that would have jurisdiction, but for the exclusive jurisdiction of the commission, and the information necessary to meet those requirements; [and]

(2) substantial evidence that the project as proposed in the application will not cause a significant adverse impact on the environment, including all the following:

....

(E) if the project will result in a discharge of waste that could affect the water quality of the state, a complete report of proposed waste discharge as required by section 13260 of the Water Code. This will allow for issuance of waste discharge requirements by the appropriate regional water quality control board with 100 days after filing of the application in accordance with Public Resources Code section 2550(d).”

The LARWQCB's February 13 letter to the Applicant means that the requirements listed above have simply not been satisfied for this project at this time. The regional board letter clearly requires the Applicant to seek and obtain a *revised NPDES permit* from the board *before* it can operate this project, and the revised permit may contain waste discharge requirements which are *substantially different* from those contained in the existing City of Burbank NPDES permit under which the Applicant initially sought approval from this Commission (e.g. California Toxic Rules, current State Implementation Plan requirements, etc.)

Given the LARWQCB's position, Staff cannot complete its analysis at this time because (1) Staff does not know what specific water quality standards will be applied to the *revised* permit for this project; (2) Staff does not know whether the water board will find that the project, as now proposed, will meet its *revised* permit standards; and (3) Staff does not know what environmental impacts may result if the project needs to be redesigned to meet the more stringent standards that are now contemplated. In short, based on the current record, Staff has no means of performing its legal responsibility to *independently evaluate* whether the project will comply with applicable laws, ordinances and standards (LORS), and will satisfy the requirements of the California Environmental Quality Act (CEQA).¹

In addition, Title 20, CCR, Section 2026 requires that:

“(a) Within 60 days after the acceptance of an application under this [six-month process] . . . all local regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their preliminary approval, comments, determinations, and opinions; [and]

(b) Within 100 days after the acceptance of an application, all local, regional, and state agencies that have jurisdiction over the project or would have jurisdiction, but for the exclusive jurisdiction of the commission, shall file and serve on all parties their final comments, determinations, and opinions.”

In the MPP case, the Applicant only recently filed its revised “NPDES Permit Application and Supplement” (on or about March 1, 2002). The adequacy of that filing has not been established by the LARWQCB through a “Letter of Completeness,” nor has the regional board issued a

¹ As part of its siting process, Commission regulations require Staff to perform an independent analysis of all environmental issues:

The staff shall present its independent assessment . . . of the adequacy of the measures proposed by the applicant to protect environmental quality and to protect public health and safety. (Title 20, CCR, Section 1723.5(b))

The Commission's regulations also state that:

The staff shall review the information provided by the applicant and other sources and assess the environmental effects of the applicant's proposal, the completeness of the applicant's proposed mitigation measures, and the need for, and feasibility of, additional or alternative mitigation measures. (Title 20, CCR., Section 1742.5(a)).

preliminary or final determination on that NPDES Application.² Thus, at a minimum it will be at least 60 to 100 additional days before the Staff and the Committee will receive the basic information required by law to proceed with this matter.

III. CONCLUSION AND RECOMMENDATION

The Commission's expedited six-month siting process is limited to those proposals which can demonstrate with substantial evidence on the record that the project will not cause significant adverse impacts on the environment and will comply with all applicable standards, ordinances, or laws. (*See, e.g.*, Public Resources Code Section 25550). For the reasons stated above, Staff concludes that it is now legally problematic (at best) as to whether the MPP proposal can remain within the Commission's six-month process. Therefore, Staff suggests that the Committee clarify the status of this proceeding in one of the following three ways:

- (1) extend the current six-month schedule until such time as the LARWQCB has issued its preliminary revised permit conditions and determination of compliance (with adequate time for Staff to review and evaluate the information received); **or**
- (2) remove this project from the six-month process entirely, but keep the project within the 12 month process, as contemplated in Title 20, CCR, Section 2028; **or**
- (3) suspend this project entirely from further Commission action until such time as the revised information is received from the LARWQCB, and the project is reinstated into the process.

The Energy Commission's siting process is intended to ensure that all parties have a complete and accurate understanding of all relevant information concerning a proposed project *prior* to the time of evidentiary hearings. The options listed above will ensure this outcome is achieved; proceeding to evidentiary hearings at this time will not.

March 6, 2002

Respectfully Submitted

DAVID F. ABELSON
Senior Staff Counsel

² In fact, the regional water board staff has stated that the application for a revised permit which it has recently received from the Applicant is not complete at this time, and the regional board staff will need the 60 days after receipt of a *complete* application to issue its preliminary revised permit (as allowed by Title 20, CCR, 2026(a)).